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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,651	08/07/2001	Kevin P. Headings	108.0010-00000	9189
22882	7590	07/13/2006	EXAMINER	
MARTIN & FERRARO, LLP 1557 LAKE O'PINES STREET, NE HARTVILLE, OH 44632			HEWITT II, CALVIN L	
			ART UNIT	PAPER NUMBER
			3621	

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/922,651

Applicant(s)

HEADINGS ET AL.

Examiner

Calvin L. Hewitt II

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22,41-49 and 60-87 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22,41-49 and 60-87 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Status of Claims

1. Claims 1-22, 41-49 and 60-87 have been examined.

Response to Amendments/Arguments

2. Regarding claims 60 and 78, Downs et al. teach combining assets and metadata based on a rule associated with one or more assets (column 39, lines 10-20; column 48, lines 45-50; column 54, lines 30-35), storing said combination at a store for storage and distribution to customers (column 23, lines 40-45; column 69, lines 1-25), wherein the rule restricts use of the combination based on geographic information of end-users (column 7, lines 55-61; column 59, lines 15-30). Applicant is of the opinion that the prior art does not teach refreshing a database based on customer demographics. The Examiner respectfully disagrees. Downs et al. disclose a store for distributing content to end-users (column/line 9/60-10/35). Swix et al. teach collecting user demographics and viewing habits then using the collection to provide content to users (column/line 1/43-2/2; column 2, lines 30-48; column 3, lines 48-64). To one of ordinary skill, it is well known to those of ordinary skill in retail to determine what products to offer based on sales and customer demographics. Therefore, it would have been obvious to one of ordinary skill for the store of Downs et al. to use stored

transaction data (what was purchased, identity of purchaser, sales) (column/line 45/65-47/5; column) to choose what content (e.g. Mariah Carey, Morrissey, etc.) it makes available to consumers.

Applicant has also not sufficiently distinguished the content database and the file repository (claims 1 and 41) as each receives content from the content management system.

Applicant's arguments with respect to claims 1-22 and 41-59 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-22 and 41-49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 41 are directed to an apparatus and method for using said apparatus. For example, claims 1 and 41 recite "a content management system having a processor" and "said content management system *selecting* the media content offering for distribution". It has been held that a claims that recites both an apparatus and a method for using said apparatus is indefinite under section

112, paragraph 2, as such a claim does not sufficiently precise to provide competitors with an accurate determination of the 'metes and bounds' of protection involved (IPXL Holdings LLC v. Amazon.com Inc. 77 USPQ2d 1140 (CA FC 2005); *Ex parte Lyell*, 17 USPQ2d 1548 (BPAI 1990)).

Further, claims 1 and 41 have been amended to recite "a content database storing the media content offering delivered from said content management system". However, it is not clear to one of ordinary skill whether Applicant is referring to the selected media content offering (e.g. claim 1, lines 9-10) or a media offering (e.g. claim 1, lines 4-5) and because both the content database and the file repository receive content from the content management system.

Claims 2-22 and 42-49 are also rejected as each depends from claims 1 or 41.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-22, 41-49 and 60-87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downs et al. U.S. Patent 6,226,618 in view of Swix et al., U.S. Patent 6,718,551.

As per claims 1-22, 41-49 and 60-87

Downs et al. teach a system for providing content to users comprising:

- a (local) content database or repository storing the media content offering delivered from said content management system, a rack that receives the media content offering from said content management system, said rack including a file repository for storing media content associated with the media content offering and a server distributing media content stored in said file repository (figures 1D, 5, 6, 10 and 14; column/line 68/47-70/39)
- a processor that combines media assets and metadata (figure 1) combining media assets and metadata based on selected groupings of the consumers to create a media content offering for each selected grouping of the consumers, said content management system selecting the media content offering for distribution to the selected groupings of the consumers based on at least one of a geographical location, a bit rate service, a service provider, and a contractual term (e.g. specifying a provider) and to aggregate the selected media content offering into a rollout available for exhibition to the consumers (column 26, lines 5-30;

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column 39, lines 10-20; column 48, lines 45-50; column 54, lines 30-35;
column 59, lines 15-30; column 69, lines 1-27)

- a subscriber management system for creating a plurality of subscriber accounts, said subscriber management system including at least one processor and at least one medium for storing subscriber account information, said processor being operable to maintain the subscriber accounts and includes a procedure for billing the subscriber accounts, said subscriber management system being operable to group individual consumers into the selected groupings for receiving selected media content -offering specific for at least one of the selected groupings (column 23, lines 15-20; column/line 45/65-47/25)
- subscriber management system processor that manages consumer-related information, further comprising a database for storing the consumer related information (e.g. billing, demographics (column 23, lines 15-20; column/line 45/65-47/25)
- collecting information associated with the use of media content selected from the media content offering by each consumer (e.g. content use information includes consumer media content preferences) (column 23, lines 15-20; column/line 45/65-47/25)

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- server for licensing content and license terms or rules (e.g. content offer expires after a length of time, price) (column 25, lines 20-35; column 26, lines 5-35; column 59, lines 33-67)
- license includes a decryption key program adapted to decrypt media content that is encrypted (column/line 81/62-82/5; column 83, lines 2-15)
- subscriber management processor checking an accounts database and determine whether the consumer is permitted to use the selected media content (column 23, lines 15-20; column/line 45/65-47/25)

Swix et al. teach collecting user demographics and viewing habits (e.g. length of time) then using the collection to provide content to users (column/line 1/43-2/2; column 2, lines 30-48; column 3, lines 48-64). Downs et al. disclose a store for distributing content to end-users (column/line 9/60-10/35). Swix et al. teach an ad manager collecting user demographics and viewing habits then using the collection to provide content to users (column/line 1/43-2/2; column 2, lines 30-48; column 3, lines 48-64). To one of ordinary skill, it is well known to those of ordinary skill in retail to determine what products to offer based on sales and customer demographics.

Therefore, it would have been obvious to one of ordinary skill for the store of Downs et al. to use stored transaction data (what was purchased, identity of purchaser) ('618, column/line 45/65-47/5) to choose (i.e. refresh or update it's database of offerings) what content (e.g. Mariah Carey, Morrissey, etc.) it

makes available to consumers. And, to one of ordinary skill “selected groupings of consumers” are those consumers that have been targeted using the method disclosed by Swix et al. for ads promoting certain artists (e.g. Mariah Carey).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Tuzhilin et al. teach determining what products to offer based on sales, season and customer demographics

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory

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action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Calvin Loyd Hewitt II whose telephone number is (571) 272-6709. The Examiner can normally be reached on Monday-Friday from 8:30 AM-5:00 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, James P. Trammell, can be reached at (571) 272-6712.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
c/o Technology Center 3600
Washington, D.C. 20231

or faxed to:

(571) 273-8300 (for formal communications intended for entry and after-final communications),

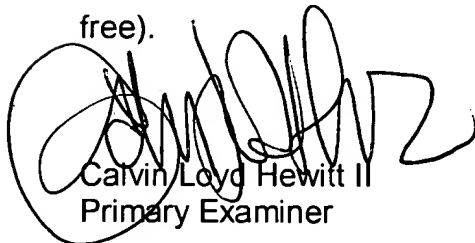
or:

(571) 273-6709 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-

free).



Calvin Lloyd Hewitt II
Primary Examiner

July 9, 2006